

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 01 July 2004**

Case No.: 1999-STA-00046

In the Matter of:

CHARLES L. DALTON,  
Complainant,

V.

COPART, INC.,  
Respondent.

Appearances:

Robert S. Coffey, Esq.  
For Complainant

Monica L. Goodman, Esq.,  
For Respondent

Before: DANIEL A. SARNO, JR.  
Administrative Law Judge

**RECOMMENDED DECISION AND ORDER ON REMAND**  
**DENYING MOTIONS TO REOPEN RECORD**

As Presiding Judge, I issued a Recommended Decision and Order (RDO) on November 27, 2000, in the above-captioned case. I recommended reinstatement of Complainant with back pay and benefits. On July 19, 2001, the Administrative Review Board (ARB) issued a Final Decision and Order rejecting the recommendation and dismissing the complaint. On February 29, 2003, the United States Court of Appeals for the Tenth Circuit reversed the ARB and remanded the case for proceedings consistent with the order. In turn, on January 16, 2004, the ARB remanded the case to me for further proceedings consistent with the Order of the Tenth Circuit, including whether to reopen the record on the issue of remedies.

On May 4, 2004, I ordered the parties to file motions establishing good cause why the record should be reopened at this time.

Both parties have submitted requests to reopen the record. Both motions will be denied for the following reasons.

Complainant requests that the record be reopened to allow Complainant to submit evidence with regard to compensatory damages for emotional and mental pain and suffering.<sup>1</sup> Complainant alleges that it was “his understanding of the Court’s representation that he could raise them at a later date.” I made no such representation. The only post-hearing submissions which I allowed were post-hearing briefs. I closed the record on the date of hearing (Tr. 289). I specifically stated that post-hearing exhibits were not authorized (Tr. 181). I also instructed the parties to include in their post-hearing briefs any case precedent supportive of their respective positions with regard to the issue of damages (Tr. 175-176). Complainant was represented by counsel. Complainant’s counsel was given every opportunity possible at hearing to cover any and all damages which Complainant had suffered (Tr. 11, 163, 166-179, 213-214, 287). He simply failed to address whether Complainant suffered mental and emotional distress and rested his case. Having specifically placed the parties on notice the date of the hearing that post-hearing evidence would not be permitted, and having given Complainant ample opportunity on the day of hearing to cover any and all damages, I find that Complainant has failed to show good cause why the record should be reopened now.

Respondent requests the record to be reopened to present evidence demonstrating that Complainant should not be reinstated because he poses a direct threat to the safety of Respondent’s employees. In support of this allegation, Respondent submits inter alia, a petition for protective order filed by Craig Gill e on December 28, 2000 against Complainant in the District Court of Tulsa County Oklahoma. This petition was granted based on Gill’s ex parte allegations of harassment surrounding the time of Complainant’s termination and the hearing in this case. This is the same witness which I had previously determined to have significant credibility problems. Moreover, Complainant vehemently denies these ex parte allegations which were made almost four years ago. A protective order issued as a result of ex parte allegations is not the result of a determination made after an adversarial proceeding. Consequently, it is issued based on the allegations alone. Based on the foregoing, I do not find these unsubstantiated allegations to be sufficient to warrant reopening the record, especially since these allegations are made by an individual who I already determined has significant credibility problems.

Respondent also claims that several letters written by Complainant to individuals at Respondent (Copart, Inc.) constitute continued harassing and threatening conduct because Complainant quoted Old Testament scripture “which symbolized the death of the enemy.” This is nothing but pre speculation on Respondent’s behalf. At best, those letters show an individual who is frustrated after being fired. They certainly do not rise to the level of threats of violence.

Respondent also submits several protective orders sought by Complainant’s former wife from 1999 to 2002. Presumably, this is to further show Complainant’s violent nature and his continued hostility to Copart. This is pure speculation. Again, these are ex parte allegations made against Complainant by a former spouse. Moreover, they do not in any way show ongoing hostility to Respondent. Consequently, based on the foregoing, Respondent has failed to show

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<sup>1</sup> The same request was made by Complainant in his post-hearing brief. I denied that request (See RDO, p. 34).

good cause why the record should be reopened to present evidence that Complainant poses a direct threat to Respondent's employees.

Finally, Respondent requests the record to be reopened to show that it is no longer in the trucking business. In support of that, Respondent submits the affidavit of Gerry Waters maintaining that as of April 7, 2004, Copart, Inc., no longer owns trucks or employs truck drivers.<sup>2</sup> In rebuttal, Complainant submits Exhibit C, dated June 15, 2004, which indicates, as of that date, Copart, Inc., is a salvage vehicle auction service which in 2003 acquired one salvage facility in Nevada and opened six new salvage facilities in Missouri, Texas, Florida, California and Virginia. Moreover, the company owns six public auction facilities located in Detroit, Michigan, Virginia and Pennsylvania. Copart operates over 650 tow trucks. Based upon this, I find that Respondent has abjectly failed to show why the record should be reopened for evidence that Copart no longer employs truck drivers. Moreover, assuming arguendo that what Respondent alleges is true, Respondent can still reinstate Complainant's tow truck driver job at its Detroit, Michigan facility.<sup>3</sup>

For all the reasons given above, IT IS ORDERED that the motions to reopen the record filed by Complainant and Respondent ARE DENIED.

IT IS RECOMMENDED that the Administrative Review Board adopt my findings; reinstate Complainant to his previous position as driver, with the same pay schedule, health, welfare and pension benefits as of the date of termination; award back pay in the amount of \$531.00 per week beginning at the date of termination, March 4, 1999, until the date of reinstatement, or the date of Respondent's offer of reinstatement if Complainant declines reinstatement; and award interest at the treasury bill rate specified in 26 U.S.C. §6621 in effect when my RDO was filed with the Secretary of Labor, to be computed on all accrued benefits from the date on which each payment was originally due to be paid.

**A**  
Daniel A. Sarno, Jr.  
Administrative Law Judge

DAS

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<sup>2</sup> The only exception to this is in Respondent's Detroit facility.

<sup>3</sup> Complainant's pleading makes clear that he would relocate for a job at the Detroit facility.